

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 123.

JOHN C. GOODRICH AND CLARENCE M. BURTON,
PLAINTIFFS IN ERROR,

vs.

THE CITY OF DETROIT AND LOUIS B. LITTLEFIELD,
TREASURER OF THE CITY OF DETROIT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

FILED JULY 31, 1900.

(17,853.)



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1 STATE OF MICHIGAN:

Supreme Court.

JOHN C. GOODRICH and CLARENCE M. BURTON, Complainants and	}
Appellants,	
vs.	
THE CITY OF DETROIT and LOUIS B. LITTLEFIELD, Defendants	}
and Appellees.	

Bill of Complaint.

STATE OF MICHIGAN:

Circuit Court for the County of Wayne. In Chancery.

Your orators, John C. Goodrich and Clarence M. Burton, of the city of Detroit, in said county of Wayne, respectfully show unto the court:

1. That they are the owners of lots numbers sixty-six (66), sixty-nine (69), seventy (70), eighty (80), eighty-one (81), eighty-four (84), eighty-five (85), eighty-six (86), eighty-seven (87), eighty-eight (88), eighty-nine (89), ninety-six (96), ninety-seven (97), ninety-eight (98), ninety-nine (99), one hundred (100), one hundred one (101), one hundred two (102), one hundred three (103), one hundred four (104) and one hundred five (105), of Goodrich & Burton's subdivision of part of section twenty-eight (28), town fifteen (15), range twelve (12) east, being in the city of Detroit, in said county and State.

2. That on the fourteenth day of November, A. D. 1893, a resolution was passed by the common council of the city of Detroit, declaring the opening and extending of Milwaukee avenue, between Chene street and Mt. Elliott avenue (where not already opened sixty feet wide, except between the Boulevard and Collins street, where said avenue shall be the average width of 67.10 feet), for the use and benefit of the public as a public street and highway, to be necessary, a certified copy of which resolution was attached to the petition filed in the recorder's court, a copy of which petition and resolution is hereto attached, marked Exhibit "1."

3. That afterwards, on the sixth day of January, 1894, the petition of the City of Detroit for the opening and extending of Milwaukee avenue between Chene street and Mt. Elliott avenue, was filed in the recorder's court of the city of Detroit, a copy of which petition is hereto attached marked Exhibit "1."

2 4. That on the eighth day of January, 1894, a summons was issued, returnable on February 5th, 1894. That on the fifth day of February, 1894, an order was entered requiring the sheriff to return a list of twenty-four freeholders of the city of Detroit, on the tenth day of February, 1894, at nine o'clock a. m., and on the twelfth day of February, 1894, a jury was struck, and an order fixing the hearing for the nineteenth day of February, at ten o'clock in the forenoon, and ordering a venire to be issued, returnable at that time.

That on the nineteenth day of February, 1894, the following entry was made in the journal of the recorder's court:

"In the matter of opening and extending Milwaukee avenue, between Chene street and Mt. Elliott avenue, where not already opened sixty feet wide (except between the Boulevard and Collins street, where said avenue shall be an average width of 67.10 feet), for the use and benefit of the public as a public street and highway, in the city of Detroit.

A venire having been duly issued by the clerk of this court in obedience to an order heretofore entered commanding the sheriff of Wayne county to summons the persons therein named to appear in this court on this day to serve as jurors in this matter, and said venire having been duly returned served, and all the persons therein summoned having appeared and answered to their names when called except Thomas Currie, who is excused by the court, he being ineligible under the statute, the court proceeded to impanel the jury from the persons so summoned and remaining. (Here follows eleven names.) It appearing to the court that a sufficient number of qualified persons are not in attendance to serve as jurors in this matter, it is ordered that the sheriff of the county of Wayne summon one person possessing the necessary qualifications, to serve as a talesman in the matter. In obedience to said order, Charles T. Beilman is so summoned, appears in open court, answers to his name, takes a seat in the jury-box. Thereupon the jury was impaneled, named (here follows twelve names), are duly elected, tried and sworn in the manner prescribed by law, sit together, and in charge of an officer view the property to be taken and are excused by the court Thursday, the 1st day of March, A. D. 1894, at nine o'clock in the forenoon local time."

5. On the sixth day of March, A. D. 1894, the following entry appears on the journal of the recorder's court of the city of Detroit:

3 "In the matter of the opening and extending Milwaukee avenue between Chene street and Mt. Elliott avenue, where not already opened sixty feet wide (except between the Boulevard and Collins street, where said avenue shall be an average width of 67.10 feet), for the use and benefit of the public as a public street and highway, in the city of Detroit.

The jury heretofore impaneled in this cause came into court again, heard the conclusion of the evidence in the case, the arguments of counsel and the instructions of the court as to their duties and the law of the case, and retire under charge of an officer, duly sworn to attend to them to consult upon their verdict. Having been absent for a time, return into court, and having been inquired of as to their verdict, say, upon their oath aforesaid, that they have agreed upon a verdict in favor of said opening, which they present to the court in writing. Thereupon it is ordered by the court that said verdict be filed."

(A copy of which verdict is hereto attached, marked Exhibit "2.")

And on May 7th, 1894, the following entry was made:

"In the matter of the opening and extending Milwaukee avenue between Chene street and Mt. Elliott avenue, where not already opened sixty feet wide (except between the Boulevard and Collins street, where said avenue shall be an average width of 67.10 feet) for the use and benefit of the public as a public street and highway, in the city of Detroit.

In this cause no motion for a new trial or to rest the proceedings having been made, and two days having elapsed since the rendition of the verdict, on motion of Frank A. Rasch, city attorney, it is ordered by the court now here that the verdict of the jury in this matter be and the same is hereby in all things confirmed."

6. That the above comprises all the orders made in said case, so far as they appear on the journals of said court.

7. That on the seventh day of August, 1894, a resolution was adopted by the common council as follows:

"Resolved, That the common council of the city of Detroit do hereby fix and determine that the following district and portion of said city of Detroit, to wit (here follows descriptions) is benefited by the opening of Milwaukee avenue from Chene street to Mt. Elliott avenue, where not already opened. And further resolved, That there be assessed and levied upon the several pieces and parcels of real estate included in the above description, the amount of \$15,214.75 in proportion, as near as may be, to the advantage which such lot or parcel is deemed to acquire by such improvement."

4 And further resolved, That the board of assessors of said city of Detroit be, and they are hereby, directed to proceed forthwith to make an assessment-roll in conformity with the requirements of the charter of the city of Detroit, relating to special assessments for collecting the expense of public improvements when a street is graded, comprising the property hereinbefore described, upon which they shall assess and levy the amount of \$15,214.75, each lot or parcel to be assessed a ratable proportion, as near as may be, of said amount, in accordance to the amount of benefit derived for such improvements."

8. On the twenty-fifth day of September, 1894, the assessors reported assessment-roll number 58 for defraying the expense of opening Milwaukee avenue, which was laid on the table.

9. On the second day of October, 1894, the assessment-roll was reported by the committee on street opening and confirmed by the council.

10. On November twentieth, 1894, the following resolution was passed by the common council:

"Resolved, That the resolution passed by this council October 2d, 1894, confirming the street assessment-roll number 58, for defraying part of the expense of and costs of opening Milwaukee avenue be, and the same is hereby, rescinded."

11. On the twenty-second day of January, 1895, the following resolution was adopted by the common council:

"Resolved, That the said council of the city of Detroit, do hereby fix and determine that the following district and portion of said city of Detroit, to wit: (Here follows list of descriptions, many of which

are different from those in first assessment district) is benefited by the opening of Milwaukee avenue from Chene street to the easterly city limits, where not already opened; and further resolved, that there be assessed and levied upon the several pieces and parcels of real estate included in the above descriptions, the amount of \$15,214.75, in proportion, as near as may be, to the advantage which each lot or parcel is deemed to acquire by this improvement. And further resolved, that the board of assessors of said city of Detroit be, and they are hereby, directed to proceed forthwith to make an assessment-roll in conformity with the requirements of the charter of the city of Detroit relating to special assessments for collecting the expense of public improvements when a street is graded, comprising the property hereinbefore described, upon which they shall assess and levy the amount of \$15,214.75, each lot or parcel to be assessed a ratable proportion, as near as may be, of said amount, in accordance to the amount of benefit derived by such improvements."

5 12. On the twelfth day of March, 1895, the assessors reported a new assessment-roll number 58, for defraying the expenses of opening Milwaukee avenue, which was referred to the committee on street openings.

13. On the fourth day of April, 1895, the following action was taken by the common council:

"To the honorable the common council:

GENTLEMEN: Your committee on street openings, to whom was referred the communication of the board of assessors transmitting the new assessment-roll for defraying the expense and cost of taking private property for the opening of Milwaukee avenue, from Chene street to Mt. Elliott avenue, said assessment-roll was advertised February 26th, 27th, and 28th, and March 1st and 2d, 1895—respectfully report, that we have carefully examined the matter and recommend that said assessment-roll be confirmed, and herewith offer the following resolution.

Respectfully submitted,

E. B. WELTON.
JOHN F. HACKER.
ANTHONY WEILER.

Accepted, and on leave the following resolution was offered by Alderman Welton:

Resolved, That the common council of the city of Detroit, do hereby approve and confirm street opening assessment-roll No 58, for defraying the expense and cost for taking private property for the opening of Milwaukee avenue from Chene street to Mt. Elliott avenue, where not already opened.

Adopted. Yeas, 19; nays, none.

14. That your orators' lands are worth upwards of one hundred dollars, and were assessed on said assessment-roll for the following amounts, respectively:

Lot No. 66, Goodrich & Burton's subdivision of part of						
section 28, town 14, range 12 east.....						\$5.00
" " 69,	"	"	"	"	"	5.00
" " 70,	"	"	"	"	"	5.00
" " 80,	"	"	"	"	"	60.00
" " 81,	"	"	"	"	"	67.00
" " 84,	"	"	"	"	"	67.00
" " 85,	"	"	"	"	"	67.00
" " 86,	"	"	"	"	"	67.00
" " 87,	"	"	"	"	"	67.00
" " 87,	"	"	"	"	"	67.00
" " 88,	"	"	"	"	"	67.00
" " 89,	"	"	"	"	"	67.00
" " 96,	"	"	"	"	"	72.00
" " 97,	"	"	"	"	"	72.00
" " 98,	"	"	"	"	"	72.00
" " 99,	"	"	"	"	"	72.00
" " 100,	"	"	"	"	"	72.00
" " 101,	"	"	"	"	"	77.00
" " 102,	"	"	"	"	"	77.00
" " 103,	"	"	"	"	"	77.00
" " 104,	"	"	"	"	"	77.00
" " 105,	"	"	"	"	"	77.00

6 15. Your orators further show that none of the above-described lands assessed for the opening of said street, abut upon those parts of the street which were opened by these proceedings, but that your orators at the time said land was platted, dedicated to the city of Detroit all that portion of Milwaukee avenue lying in front of these lands and included in Goodrich's & Burton's subdivision of part of section 28, town 14, range 12 east, without cost or expense to the city.

16. That the receiver of taxes returned said several descriptions as delinquent for said taxes, and the same were sold for said taxes and bid off to the City of Detroit for ninety-nine years, and the city now claims to hold the same under said sale.

17. Your orators allege that said taxes are invalid for the following reasons:

(a.) Because the resolution of the common council declaring the necessity for the opening of said street was passed at the same meeting at which it was introduced, without unanimous consent being given therefor.

(b.) Because the resolution of the common council declaring the necessity of opening said street does not describe the land to be taken for such improvement.

(c.) Because the petition filed by the city attorney in the recorder's court, for the condemnation of lands for the opening of Milwaukee avenue, does not describe the several parcels of land to be taken for such improvement.

(d.) Because the certified copy of the resolution of the council filed

with the city attorney, and attached to the petition, does not describe the several parcels of land to be taken for such improvement.

(e.) Because the verdict of the jury rendered in said cause, does not describe the several parcels of land to be taken for such improvement.

(f.) Because the jury were not sworn, as required by section 3064 G of Howell's Statutes.

(g.) Because the oath administered to the jury did not describe the several parcels of land to be taken for such improvement.

(h.) Because a large part of the land for which damages were allowed by the jury, and for which the assessment was made, was not condemned.

(i.) Because the lands belonging to your orators, above described, did not abut on those parts of Milwaukee avenue which were opened, and said lands were not liable to be assessed therefor.

7 (j.) Because the verdict of the jury does not fix the amount of damages allowed for each piece of land separately.

(k.) Because it appears from the verdict of the jury that the damages allowed for certain parcels of land, were stipulated by the parties and not allowed by the jury.

(l.) Because the verdict of the jury is unintelligible.

(m.) Because the petition, with a certified copy of the resolution declaring the necessity for the opening of Milwaukee avenue attached thereto, was submitted to the jury.

(n.) Because the resolution of the common council fixing the assessment district, does not find and determine that the portion of the city embraced in the assessment district was benefited by the improvement in the sum of \$15,214.75, the amount of the entire award.

(o.) Because there is no finding by the common council of the amount the lands included in said assessment district were benefited by the improvement.

(p.) Because such assessment was not made in the manner required by statute and the charter of the city of Detroit, or as directed by the resolution of the common council.

(q.) Because section 3406 of the Compiled Laws of the State of Michigan of 1897, is in violation of article 6, section 32 of the constitution of the State of Michigan, forbidding the depriving of any person of life, liberty or property without due process of law.

(r.) Because the resolution of the common council directing the assessment, and the assessment made in pursuance of said resolution, upon complainant's lands, by the common council of the city of Detroit, was in violation of article 6, section 32 of the constitution of the State of Michigan.

(s.) Because section 3406 of the Compiled Laws of the State of Michigan of 1897, is in violation of the 14th amendment to the Constitution of the United States, forbidding any State from depriving a person of property, without due process of law.

(t.) Because the resolution of the common council directing the assessment, and the assessment made in pursuance of said resolution,

upon complainant's lands, for the opening of said street, was in violation of the 14th amendment of the Constitution of the United States, forbidding any State from depriving a person of property without due process of law.

(u.) Because section 3406 of the Compiled Laws of the State of Michigan of 1897, is in violation of article 6, section 32 of the constitution of the State of Michigan, because it does not require that the portion of the award of the jury which the common council may order to be assessed upon said assessment district, shall not exceed the total amount of the benefit derived by the lands in said district from such improvement.

8 (v.) Because section 3406 of the Compiled Laws of the State of Michigan, of 1897, is in violation of the 14th amendment to the Constitution of the United States, because it does not require that the portion of the award of the jury which the common council may order to be assessed upon said assessment district, shall not exceed the total amount of the benefits derived by the lands in said district from such improvement.

(w.) Because the resolution of the common council of the city of Detroit, directing said assessment, is in violation of article 6, section 32, of the constitution of the State of Michigan, because it does not determine or find that the property included in the assessment district is benefited to the amount of the assessment.

(x.) Because the resolution of the common council of the city of Detroit, directing said assessment, is in violation of the 14th amendment to the Constitution of the United States, because it does not determine or find that the property included in the assessment district is benefited to the amount of the assessment.

18. Your orators further show that Louis B. Littlefield is the treasurer of the city of Detroit.

19. Your orators further show that said taxes are an apparent cloud upon the title of your orators to said land, and your orators fear that the said Louis B. Littlefield, treasurer of the city of Detroit, will sell the said land for such taxes, unless restrained from so doing by this honorable court.

20. Your orators therefore pray that the said defendants, The City of Detroit and Louis B. Littlefield, treasurer of the city of Detroit, may, without oath (their answers under oath being hereby expressly waived), full, true and perfect answer make to all and singular the matters herein contained and stated, as fully and particularly as if the same were repeated and they thereby distinctly interrogated.

21. That the said taxes assessed on said several descriptions of land, for the opening of said Milwaukee avenue, may, by the order of this court, be declared to be void, and be set aside, and the cloud created thereby upon the title of your orators to said land, may be removed, and that the said City of Detroit, and Louis B. Littlefield, treasurer of the city of Detroit, may, by an injunction, issued out of and under the seal of this court, be perpetually restrained from advertising and selling, or attempting to advertise and sell, the lands hereinbefore described, or any of them, for the said taxes assessed thereon, and that your orators may have such other and further

relief in the premises as may be agreeable to equity and good conscience, and as to the court shall seem meet.

9 22. May it please the court, the premises being considered, to grant to your orators the writ of subpoena, to be issued out of and under the seal of this court, to be directed to the said City of Detroit, and Louis B. Littlefield, treasurer of the city of Detroit, defendants herein, thereby commanding them, and each of them, on a certain day and under a certain penalty to be therein inserted, personally to be and appear before this court, then and there to answer all and singular the said premises, and to stand to, abide and perform such order and decree as this court shall make therein, and as shall be agreeable to equity and good conscience, and your orators will ever pray, etc.

JOHN C. GOODRICH AND
CLARENCE M. BURTON,
Complainants.

BACON & PALMER,
Solicitors for Complainants.

10

EXHIBIT "I."

STATE OF MICHIGAN:

In the Recorder's Court of the City of Detroit.

To the recorder's court of the city of Detroit:

Your petitioner, The City of Detroit, a municipal corporation, by Frank A. Rasch, its city attorney, respectfully shows unto the court as follows:

First. That this petition is made and filed as commencement of judicial proceedings by your petitioner, The City of Detroit, in pursuance of an act entitled "An act to authorize cities and villages to take private property for the use or benefit of the public, and to repeal act number twenty-six, of the public acts of eighteen hundred and eighty-two," being act number one hundred and twenty-four, of the public acts of eighteen hundred and eighty-three, as amended March 29, 1887, and July 3, 1889, to acquire the right to take private property for the use and benefit of the public, without the consent of the owners, for a public improvement, to wit:

"Opening and extending Milwaukee avenue between Chene street and Mt. Elliott avenue where not already opened sixty feet wide (except between the Boulevard and Collins street where said avenue shall be an average width of 67.10 feet) for the use and benefit of the public as a public street and highway,"

and for a just compensation to be made.

Second. That in making and maintaining the proposed improvement, a perpetual right of way over the different pieces or parcels of private property, hereinafter described, will be necessary; and that such right of way is proposed to be used for the purpose of a public street and highway.

11 Third. That the common council of said city of Detroit, by a resolution duly passed and adopted by said common council, on the 14th day of November, A. D. 1893, and duly approved by the mayor of said city, on the 21st day of November, A. D. 1893, have declared such public improvement, to wit:

"opening and extending Milwaukee avenue, between Chene street and Mt. Elliott avenue where not already opened sixty feet wide (except between the Boulevard and Collins street where said avenue shall be an average width of 67.10 feet) for the use and benefit of the public as a public street and highway."

to be necessary, and that they deem it necessary to take the private property described in that behalf, for such public improvement, for the use and benefit of the public, and that in making such public improvement, they deem it necessary to take said private property therefor.

Fourth. That a copy of said resolutions, certified under seal by the clerk of said city of Detroit, was duly served by said clerk upon the city attorney of said city, and is hereto attached, marked Exhibit "A," and made a part of this petition.

Fifth. That the different pieces or parcels of real estate being lots, tracts, and private property in said city of Detroit, proposed to be taken for said public improvement to wit:

"opening and extending Milwaukee avenue between Chene street and Mt. Elliott avenue, where not already opened sixty feet wide (except between the Boulevard and Collins street, where said avenue shall be an average width of 67.10 feet) for the use and benefit of the public as a public street and highway,"

as described in said resolution, together with the names of the owners and occupants of and others interested in said lots, tracts and parcels, respectively, as far as the same can be ascertained, are stated below to wit:

Description of each of the several parcels of private property proposed to be taken.		Names of persons interested.	The interest of each.
<p>All that part of outlot eleven (11) of Theodore J. and Denis J. Campan plat of the subdivision of fractional section No. twenty-nine (29) and thirty-two (32), town one (1) south range 12 east, described as follows: Commencing at the southwesterly corner of said outlot eleven (11), thence north sixty-four (64) degrees east, seven hundred and eleven and eighty-five-hundredths (711.85) feet. Thence north twenty-six (26) degrees west sixty (60) feet. Thence south sixty-four (64) degrees west six hundred and eighty-three and eighty-one-hundredths (683.81) feet; thence south fifty-seven (57) minutes east, sixty six and twenty-four-hundredths (66.24) feet to the place of beginning.</p>	<p>N. 30 ft. of S. 60 ft. of W. 77.51 ft. east of and adjoining Chene St. S. 30 ft. of W. 84.53 ft. east of and adjoining Chene St.</p>	<p>{ Frederick J. Schwankovsky, Julia St. V. Schwankovsky.. Henry Ridiger</p>	<p>Owner in fee. Contingent dower. Owner in fee. Contingent dower.</p>
	<p>N. 30 ft. of S. 60 ft. of W. 77.51 ft. west of and adjoining Jos. Campan Ave. extended.</p>	<p>{ Louisa Ridiger</p>	<p>Owners in common.</p>
	<p>S. 30 ft. of west 84.52 ft. west of and adjoining Jos. Campan Ave. extended. In line of Jos. Campan Ave. extended.</p>	<p>{ Charles Holtz</p>	<p>Contingent dower. Contingent dower.</p>
	<p>E. 101.20 ft. east of and adjoining Jos. Campan Ave. extended.</p>	<p>{ Susan A. Hitchcock</p>	<p>Owner in fee. Mortgagee.</p>
	<p>East 20 ft. of east 121.30 ft. lying east of and adjoining Jos. Campan Ave. extended.</p>	<p>{ Henry W. Whalen</p>	<p>Owner in fee. Mortgagee.</p>
	<p>West 101.20 ft. lying west of and adjoining Mitchell Ave. extended.</p>	<p>{ Charles P. Rabaut</p>	<p>Owner in fee.</p>
	<p>East 100 ft. lying east of and adjoining Mitchell Ave. extended.</p>	<p>{ John Pfeifle</p>	<p>Contingent dower. Occupant.</p>
	<p>East 20 ft. of east 120 ft. lying east of and adjoining Mitchell Ave. extended and property included in lines of Mitchell Ave. extended.</p>	<p>{ John Pfeifle</p>	<p>Owner in fee. Contingent dower.</p>
	<p>West 100 ft. lying west of and adjoining McDougall Ave. extended.</p>	<p>{ Michael Fischer</p>	<p>Owner in fee. Contingent dower.</p>
		<p>{ Joseph E. Mason</p>	<p>Owner in fee. Contingent dower. Mortgagee. Owner in fee.</p>
		<p>{ The City savings bank</p>	<p>Owner in fee.</p>
		<p>{ Wilhelmmina Berlin</p>	<p>Owner in fee. Contingent dower.</p>
		<p>{ John Pfeifle</p>	<p>Owner in fee.</p>
		<p>{ Lena Pfeifle</p>	<p>Owner in fee.</p>
		<p>{ Wilhelmmina Berlin</p>	<p>Owner in fee.</p>

13 Also all that part of outlot eleven (11) of the subdivision last mentioned, described as follows: Commencing at the intersection of the southerly line of said outlot with the easterly line of the Boulevard; thence north sixty-four (64) degrees east two hundred and five and forty-hundredths (205.40) feet; thence north twenty-six (26) degrees west seven and twenty-hundredths (7.20) feet; thence south sixty-four (64) degrees west nineteen (19) feet; thence north twenty-six (26) degrees west sixty and ten-hundredths (60.10) feet; thence south sixty-four (64) degrees west one hundred and eighty-six and forty-hundredths (186.40) feet; thence south twenty-six (26) degrees east sixty-six and ninety-hundredths (66.90) feet to the place of beginning.

Also all that part of lot two (2) of the late Edwin Jerome's survey of part of fractional section twenty-eight (28), town one (1) south of range twelve (12) east, described as follows: Commencing at the intersection of the westerly line of said lot two (2) and the southerly line of Milwaukee avenue; thence south sixty-four (64) degrees west four hundred and forty-three and forty-hundredths (443.40) feet; thence south seventy-nine (79) degrees and four (4) minutes west two hundred and thirty and sixty-four-hundredths (230.64) feet; thence south sixty-four (64) degrees west two hundred and twenty-two and fourteen-hundredths (222.14) feet; thence south twenty-seven (27) degrees and forty-four (44) minutes east sixty and three-hundredths (60.03) feet to the place of beginning.

Also all the part of lot one (1) of the late Edwin Jerome's survey last mentioned described as follows: Commencing at the intersection of the southerly line of Milwaukee avenue extended and the westerly line of Mt. Elliott avenue; thence north twenty-seven (27) degrees and forty-two (42) minutes west sixty and three-hundredths (60.03) feet; thence south sixty-four (64) degrees west three hundred and eighty and three-hundredths (380.03) feet; thence north seventy-nine (79) degrees and four (4) minutes east two hundred and thirty and sixty-four-hundredths feet (230.64); thence north sixty-four (64) degrees east one hundred and fifty-nine (159) feet to the place of beginning.

Martin Lamb.
Owner in fee.
Tillie B. Lamb.
Contingent dower.

Michael Lambert.
Owner in fee.
Christina Lambert.
Contingent dower.

Henry Lambert, Jr.
Owner in fee.
Margaret Lambert.
Contingent dower.

14 By Ald. SCOVEL:

Resolved, That the common council of the city of Detroit hereby declare it to be necessary to make a public improvement in the city of Detroit, by opening and extending Milwaukee avenue between Chene street and Mt. Elliott avenue where not already opened sixty feet wide (except between the Boulevard and Collins street where said avenue shall be an average width of 67.10 feet) for the use and benefit of the public as a public street and highway, and that they hereby declare that they deem it necessary to take the private property hereinafter described for such public improvement, to wit: Opening and extending Milwaukee avenue between Chene street and Mt. Elliott avenue where not already opened sixty feet wide (except between the Boulevard and Collins street, where said avenue shall be an average width of 67.10 feet) for the use and benefit of the public as a public street and highway, and that such improvement is for the use and benefit of the public; that the private property which they deem it necessary to take for the purpose of making such improvement is more particularly described as lying and being in the city of Detroit, county of Wayne and State of Michigan, and bounded as follows, to wit:

All that part of outlot eleven (11) of Theodore J. and Denis J. Campau plat of the subdivision of fractional section No. twenty-nine (29) and thirty-two (32), town one (1) south, range 12 east, described as follows: Commencing at the southwest corner of said outlot eleven (11), thence north sixty-four (64) degrees east, seven hundred and eleven and eighty-five-hundredths (711.85) feet; thence north twenty-six (26) degrees west, sixty (60) feet; thence south sixty-four (64) degrees west, six hundred and eighty-three and eighty-one-hundredths (683.81) feet; thence south fifty-seven (57) minutes east, sixty-six and twenty-four-hundredths (66.24) feet to the place of beginning.

Also all that part of outlot eleven (11) of the subdivision last mentioned, described as follows: Commencing at the intersection of the southerly line of said outlot with the easterly line of the Boulevard; thence north sixty-four (64) degrees east two hundred and five and forty-hundredths (205.40) feet; thence north twenty-six (26) degrees west, seven and twenty-hundredths (7.20) feet; thence south sixty-four (64) degrees west, nineteen (19) feet; thence north twenty-six (26) degrees west, sixty and ten-hundredths (60.10) feet; thence south sixty-four (64) degrees west, one hundred and eighty-six and forty-hundredths (186.40) feet; thence south twenty-six (26) degrees east, sixty-six and ninety-hundredths (66.90) feet to the place of beginning.

Also all that part of lot two (2) of the late Edwin Jerome's survey of part of fractional section twenty-eight (28), town one (1) south, range twelve (12) east, described as follows: Commencing at the intersection of the westerly line of said lot two (2) and the southerly line of Milwaukee avenue; thence south sixty-four (64) degrees west, four hundred and forty-three and forty-hundredths (443.40) feet; thence south seventy-nine (79) degrees and four (4) minutes west, two hundred and thirty and sixty-four-



hundredths (230.64) feet; thence south sixty-four (64) degrees west, two hundred and twenty-two and fourteen-hundredths (222.14) feet; thence south twenty-seven (27) degrees and forty-four minutes (44) east, sixty and three-hundredths (60.03) feet to the place of beginning.

Also all that part of lot one (1) of the late Edwin Jerome's survey last mentioned, described as follows: Commencing at the intersection of the southerly line of Milwaukee avenue extended and the westerly line of Mt. Elliott avenue; thence north twenty-seven (27) degrees and forty-two (42) minutes west, sixty and three-hundredths (60.03) feet; thence south sixty-four (64) degrees west, three hundred and eighty and three-hundredths (380.03) feet; thence north seventy-nine (79) degrees and four (4) minutes east, two hundred and thirty and sixty-four-hundredths (230.64) feet; thence north sixty-four (64) degrees east, one hundred and fifty-nine (159) feet to the place of beginning.

2. And it is further resolved by the common council of the city of Detroit, that the city attorney be and is hereby directed to institute the necessary proceedings in behalf of the city of Detroit, in the recorder's court of the city of Detroit, to carry out the objects of this resolution.

Adopted as follows:

Yeas—Ald. Baker, Batchelder, Behlow, Bliel, Buhrer, Goeschel, Grunow, Hanes, Hoffman, Lowry, Patterson, Protivo, Richert, Robinson, Patterson, Roth, Schmidt, Scovel, Thompson, Vernor, Welsh, Wesch, Wright, Wuellner and the president.

Nays—None.

STATE OF MICHIGAN, }
City of Detroit, } ss:

CITY CLERK'S OFFICE, DETROIT.

I, John A. Schmid, deputy city clerk of the city of Detroit, in said State, do hereby certify that the foregoing and annexed paper is a true copy of a resolution adopted by the common council at a session held on the 14th day of November, 1893, and approved by the mayor November 21, 1893, as appears from the journal of said board remaining in the office of the city clerk of Detroit, aforesaid; that I have compared the same with the original in my office, and the same is a correct transcript therefrom, and of the whole of such original.

In witness whereof, I have hereunto set my hand and [SEAL.] affixed the corporate seal of said city at Detroit this 5th day of January, A. D. 1894.

JOHN A. SCHMID,
Deputy City Clerk.

(Here follows diagram marked p. 16.)

17 Sixth. That your petitioner has caused the said private property proposed to be taken to be surveyed, staked out and marked on the premises, and has caused a map or plan of said private property, so proposed to be taken, to be made and certified to be correct by the city engineer of the said city of Detroit, a copy of which map or plan is hereto attached, marked Exhibit "B" and made a part of this petition.

Wherefore, your petitioner prays that a jury may be summoned and empaneled to ascertain and determine whether it is necessary to make the said public improvement in the municipality; whether it is necessary to take the said private property, described in the fifth paragraph of this petition, for the use and benefit of the public; whether the taking of such private property is a necessity for the purpose of making such public improvement; to ascertain and determine the just compensation to be made for such private property proposed to be taken, and to whom the same shall be paid; and to perform such other duties as are provided to be performed by such juries by act number 124 of the Session Laws of the State of Michigan for 1883, as amended March 29, 1887, and July 3, 1889, being the act referred to in paragraph one of this petition.

Your petitioner further prays that, upon the filing hereof, a summons do issue to all the persons mentioned in paragraph five of this petition, as being interested in said private property proposed to be taken, commanding them, in the name of the people of the State of Michigan, to appear before said court at a time and place to be named in said summons, not less than twenty nor more than forty days from the date of the same, and show cause, if any they have, why the prayer of this petition should not be granted.

And your petitioner prays for such other and further relief as may be necessary within the objects of the act heretofore mentioned.

And your petitioner will ever pray.

THE CITY OF DETROIT,
By FRANK A. RASCH,

City Attorney.

STATE OF MICHIGAN, }
County of Wayne, } ss :

On this sixth day of January, A. D. 1894, before me, a notary public in and for said county, personally came Frank A. Rasch, and made oath that he is city attorney for the city of Detroit; that he has read the foregoing petition by him subscribed and knows the contents thereof, and that the same are true to the best of his knowledge and belief.

L. C. SHERWOOD,
Notary Public, Wayne County, Michigan.

Endorsed on back: "Filed this 6th day of January, A. D. 1894. George H. Leshner, clerk of the recorder's court."

EXHIBIT "2."

Report and Verdict of Jury.

STATE OF MICHIGAN:

In the Recorder's Court of the City of Detroit.

In the matter of opening and extending Milwaukee avenue between Chene street and Mt. Elliott avenue, where not already opened, sixty feet wide (except between the Boulevard and Collins street, where said avenue shall be an average width of 67.10 feet), for the use and benefit of the public as a public street and highway, in the city of Detroit.

Part I.

We, the undersigned jury, empaneled in the above matter, and having given the same due consideration, do hereby find and determine that it is necessary to make a public improvement in the municipality of Detroit, by opening and extending Milwaukee avenue between Chene street and Mt. Elliott avenue where not already opened sixty feet wide (except between the Boulevard and Collins street, where said avenue shall be an average width of 67.10 feet) for the use and benefit of the public as a public street and highway, as proposed, and that it is necessary to take the private property described in the petition in this cause, which said property is hereinafter also described, for the use and benefit of the public, and that it is necessary to take such private property for the purpose of making such public improvement.

Part II.

The private property that it is necessary to take, the damages sustained, and the just compensation to be made for such private property, and to whom payable, we hereby ascertain and determine as follows:

All that part of outlot eleven (11) of Theodore J. and Denis J. Campau plat of the subdivision of fractional section- No. twenty-nine (29) and thirty-two (32), town one (1) south, range 12 east, described as follows:

Commencing at the southwesterly corner of said outlot eleven (11) thence north sixty-four (64) degrees east, seven hundred and eleven and eighty-five-hundredths (711.85) feet, thence north twenty-six (26) degrees west sixty (60) feet; thence south sixty-four (64) degrees west six hundred and eighty-three and eighty-one-hundredths (683.81) feet; thence south fifty-seven (57) minutes east, sixty-six and twenty-four-hundredths (66.24) feet to the place of beginning.

19 Also all that part of outlot eleven (11) of the subdivision last mentioned, described as follows:

Commencing at the intersection of the southerly line of said outlot with the easterly line of the Boulevard; thence north sixty-four

(64) degrees east, two hundred and five and forty-hundredths (205.40) feet; thence north twenty-six (26) degrees west, seven and twenty-hundredths (7.20) feet; thence south sixty-four (64) degrees west, nineteen (19) feet; thence north twenty-six (26) degrees west, sixty and ten-hundredths (60.10) feet; thence south sixty-four (64) degrees west, one hundred and eighty-six and forty-hundredths (186.40) feet; thence south twenty-six (26) degrees east, sixty-six and ninety-hundredths (66.90) feet to the place of beginning.

Martin Lamb, owner in fee, \$2,507.75—Martin Lamb.

Tillie B. Lamb, contingent dower, 1.00—Tillie B. Lamb.

Also all that part of lot two (2) of the late Edwin Jerome's survey of part of fractional section twenty-eight (28), town one (1) south, range twelve (12) east, described as follows:

Commencing at the intersection of the westerly line of said lot two (2) and the southerly line of Milwaukee avenue; thence south sixty-four (64) degrees west, four hundred and forty-three and forty-hundredths (443.40) feet; thence south seventy-nine (79) degrees and four (4) minutes west, two hundred and thirty and sixty-four-hundredths (230.64) feet; thence south sixty-four (64) degrees west, two hundred and twenty-two and fourteen-hundredths (222.14) feet; thence south twenty-seven (27) degrees and forty-four minutes (44) east, sixty and three-hundredths (60.03) feet to the place of beginning.

Michael Lambert, owner in fee, \$1,379.00—Michael Lambert.

Christina Lambert, contingent dower, \$1.00—Christina Lambert.

Also all that part of lot one (1) of the late Edwin Jerome's survey last mentioned, described as follows: Commencing at the intersection of the southerly line of Milwaukee avenue extended and the westerly line of Mt. Elliott avenue; thence north twenty-seven (27) degrees and forty-two (42) minutes west sixty and three-hundredths (60.03) feet; thence south sixty-four (64) degrees west three hundred and eighty and three-hundredths (380.03) feet; thence north seventy-nine (79) degrees and four (4) minutes east two hundred and thirty and sixty-four-hundredths (230.64) feet; thence north sixty-four (64) degrees east one hundred and fifty-nine (159) feet to the place of beginning.

21 Henry J. Lambert, owner in fee, \$2,799.00—Henry J. Lambert.

Margaret Lambert, contingent dower, \$1.00—Margaret Lambert.
(It being stipulated that the city is not to take possession before
October 1st, 1894.) \$15,214.75

Part III.

And we, the said jury, further certify, that we do hereby award to each of the owners, occupants and other persons interested in said property the sum made payable to such owner, occupant or person in part two of this verdict, and that in each case we deem such sum to be a just compensation for the taking and using of said private property, and such sum is awarded for such purpose; and in cases where such private property was found to be subject to a valid mortgage, lease, agreement or other lien, estate or interest, we have apportioned and awarded to the parties in interest such portion of the damages and compensation (when we deemed it should be a portion and in other cases we have made an additional award to such person) as we deemed just and as appears in part two of this verdict.

All of which above matters are rendered to the court as the verdict of this jury, and as such is signed by each member of the jury.

- | | |
|------------------------|-----------------------|
| 1. James H. Kelly, | 7. William Clifford, |
| 2. Charles F. Bielman, | 8. G. C. Carter, |
| 3. Gerhard A. Schooff, | 9. Fred Hartwig, |
| 4. Joseph A. Walsh, | 10. Wm. A. Chudleigh, |
| 5. John Barry, | 11. John B. Thompson, |
| 6. Simon A. Asther, | 12. H. C. Munett. |

Endorsed on back: "Filed Mar. 8, 1894. Geo. H. Leshner clerk."

22 STATE OF MICHIGAN :

The Circuit Court for the County of Wayne. In Chancery.

JOHN C. GOODRICH and CLARENCE M. BURTON, Complainants,

vs.

THE CITY OF DETROIT and LOUIS B. LITTLEFIELD, City Treasurer,
Defendants.

It is hereby stipulated, by and between the solicitors for the respective parties hereto, that the time for putting in the answers of the above-named defendants, The City of Detroit, and Louis B. Littlefield, city treasurer, may be and hereby is extended to the thirty-first day of December, 1897, and that either party may notice the above-entitled cause for hearing, and have the same placed upon the calendar for the next, or January term of said court, the same as though it were at issue at the date hereof.

Dated, Detroit, December 14th, A. D. 1897.

BACON & PALMER,
Solicitors for Complainants.
CHAS. FLOWERS,
Solicitor for Defendants.

23 In the Circuit Court for the County of Wayne In Chancery.

JOHN C. GOODRICH and CLARENCE M. BURTON

vs.

THE CITY OF DETROIT and LOUIS B. LITTLEFIELD, Treasurer. }

The Answer of the said Defendants, The City of Detroit and Louis B. Littlefield, to the Complainants' Bill of Complaint.

First. These defendants admit the allegations contained in paragraphs 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13 and 16 of said bill of complaint.

Second. They have no knowledge concerning the allegations contained in paragraphs 1, 14 and 15.

Third. They deny that said taxes are invalid as alleged in paragraph 17 of said bill of complaint; and they deny all the allegations of fact asserted inferentially as reason for claiming the taxes to be invalid, contained in subdivisions a, b, c, d, e, f, g, h, i, j, k, l, m, n, o, and p, in said paragraph 17; and as to the averments of law contained in said paragraph 17, they submit the same to the judgment of this court.

Fourth. These defendants deny that the complainants have stated a case which entitles them to relief, and they, therefore, pray the benefit of a demurrer, the same as though a demurrer had been specially interposed; and that the said bill of complaint may be dismissed with costs.

THE CITY OF DETROIT,
By CHARLES FLOWERS,
Corporation Counsel.
LOUIS B. LITTLEFIELD,
By CHARLES FLOWERS,
His Solicitor.

CHARLES FLOWERS,
Solicitor for Defendant,
1006 Majestic Building, Detroit, Michigan.

24 STATE OF MICHIGAN:

Circuit Court for the County of Wayne. In Chancery.

JOHN C. GOODRICH and CLARENCE M. BURTON

vs.

CITY OF DETROIT and LOUIS B. LITTLEFIELD, Treasurer. }

The complainants say that notwithstanding the answer of the defendants, they are entitled to the relief prayed in their bill of complaint.

BACON & PALMER,
Solicitors for Complainants.

25 STATE OF MICHIGAN:

Circuit Court for the County of Wayne. In Chancery.

JOHN C. GOODRICH and CLARENCE M. BURTON
vs.
 CITY OF DETROIT and LOUIS B. LITTLEFIELD, Treasurer. }

SIR: You will please to take notice that the complainants intend to and do hereby claim the right to examination of all the witnesses in this cause in open court as in a suit at law.

Yours, &c.,

BACON & PALMER.

To Charles Flowers, solicitor for defendants.

Dated, January 10, 1898.

26

Opinion.

In the Circuit Court for the County of Wayne. In Chancery.

JOHN C. GOODRICH ET AL. }
vs.
 THE CITY OF DETROIT. }

The bill in this case is filed to enjoin the collection of a special tax levied for the opening and extending of Milwaukee avenue between Chene street and Mt. Elliott avenue, sixty feet wide.

The proceedings were taken under the general act chapter 83, 3 Howell's Statutes as amended.

The complainants are not persons whose lands were taken by the proposed opening, and consequently they were not parties to the proceeding for the opening of said street; but they are owners of land within the assessment districts, authorized by section 3064 (o) Howell's Statutes, and therefore so far as the bill filed in this cause seeks to impugn the opening proceedings prior to the verdict and judgment, it is a collateral attack upon such proceedings.

Several grounds are urged why the assessment should be held void:

First. That the petition for opening the street and the verdict of the jury rendered in said cause do not describe the several parcels of land to be taken for such improvement.

The statute 3 Howell's Statutes, section 3064 (c) provides that the petition shall contain a description of the property to be taken
 27 and generally the nature and extent of the use thereof that will be required and also the names of the owners and others interested in the property so far as can be ascertained.

The statute also requires the jury by their verdict to award to each of the owners and persons interested a just compensation for the property taken.

The cases cited in complainants' brief relate chiefly to the opening and laying out of drains or to proceedings for condemning land

for railway purposes. The requirements as to the description of the lands proposed to be taken in those cases are found in 1 Howell's Statutes, sections 1696 and 3382 and are essentially different from that above quoted. The statute in those cases requires substantially that each distinct parcel of land shall be described, whereas it will be seen that in the case of street-opening there is no such requirement. Moreover, the cases cited are those in which the question was raised by the land-owners in the direct action on appeal or by writ of error or certiorari, and not collaterally by other persons than the owners of the land as in this case. These authorities are not therefore in my opinion applicable to the case of street-openings, and to a collateral attack upon such proceedings.

In this case the petition in the first column describes with substantial accuracy all the land to be taken for the proposed opening. This is subject to one qualification. In one description of land in the first column in describing a course or direction there is a clerical error. Instead of the course running north 64° east as is correct, the description reads south 64° west. All the other descriptions containing the same course or direction read correctly, viz: N. 64° east. That this is a clerical error is proved by the fact that the original manuscript description on file reads correctly, to wit, north 64° east. Attached to the petition also is a carefully prepared plat of all the land proposed to be taken. This plat is made according to scale, and certified to by the city engineer and
28 shows the original lots and descriptions with dimensions, and the part proposed to be taken is in colors with dimensions of every parcel of land to be affected and is correct in every particular. This plat is referred to in the petition and made a part thereof. But in the second column of the petition wherein it was attempted to subdivide and apportion the general description contained in the first column among the several owners, there are some inaccuracies of description.

These several owners were all made parties defendant and appeared, and made no objection to such inaccuracies or errors of description of their property. They made no objection whatever to the jurisdiction or to proceeding in the case. They introduced testimony as to the value of their lands which would actually be taken as shown by the plat, and the jury awarded them severally such damages as they would suffer, as shown by the plat. The descriptions in the verdict are the same as in the petition. The verdict also refers to the plat in a finding that it is necessary to take the private property described in the petition in this cause. Judgment was duly entered confirming the verdict, and no appeal has been taken therefrom, and the time for appeal has expired. It was stated on the argument that all of the different persons whose lands were taken have received and accepted their awards as per the verdict, and have executed conveyance to the city of the lands actually taken.

The question before me is not whether some or any of those defendants, the owners of land taken might have enjoined the City of Detroit from proceeding to take possession of lands so inac-

curately described, for they have all submitted to the jurisdiction and the verdict, and received their awards. But the question is whether other persons, these complainants, whose lands were not taken, but which are within the assessment district made to pay for the said opening, can take advantage of such irregularities and inaccuracies to enjoin the collection of the said tax.

29 It is well established that a judgment can be attacked collaterally only for want of jurisdiction. Did the recorder's court therefore have jurisdiction of the proceeding to make the proposed opening notwithstanding such errors in description? The general description of the land to be taken was substantially correct. The plat must be regarded as a part of the petition, and together they correctly showed the land to be taken in detail with dimensions. Taken together the inaccuracies of description are corrected upon the very face of the papers. There is not even a claim that any one was misled thereby. Moreover, the statute (Howell's section 3064j) provides that amendments may be allowed in the description of property proposed to be taken as well after as before judgment confirming the verdict. This would seem to imply that errors in description of small parcels were not intended to defeat the jurisdiction, so long as the whole property to be taken was correctly stated; otherwise the provision for amending descriptions would be meaningless and useless.

I have no doubt, therefore, that the recorder's court did have jurisdiction of both the persons and subject-matter of the proceeding and that the City of Detroit got a good title to the lands shown in the plat. If any of the defendants whose lands were to be taken had objected to the descriptions, they would undoubtedly have been at once corrected under the above liberal provision for amendments, and since none of such defendants did object to the descriptions, they must be regarded as having waived all inaccuracies of description, and that the verdict and judgment cures all of such errors.

Second. The statute, 3 Howell's section 3064 (G) prescribes the oath which the jurors shall take in street-opening cases. The only record found in the proceedings of the oath taken by the jurors in

this case is contained in the journal as follows: "Thereupon
30 the jury impanelled (here follow the names of the jury) are duly elected, tried and sworn in the manner prescribed by law, etc."

It is contended that the omission to show that the jury took the oath required by the statute is a fatal defect in the proceedings.

It is not doubted that where in special proceedings the statute requires a particular oath to be taken, it must be shown that the oath prescribed was actually administered. If the oath required was not administered the objection was undoubtedly open to any of the defendants in that case, the parties interested. But it is equally well settled that the verdict when rendered cures all defects and irregularities in the proceedings, not jurisdictional. In my opinion this objection is not open to these complainants who were not parties to that proceeding and cannot be taken advantage of in a collateral attack upon the verdict and judgment. All the cases cited in the complain-

ants' brief are those in which the objection was raised in a direct review of the proceedings, either in certiorari, error or appeal, and in my judgment they are not applicable to the case of a collateral attack on such proceedings.

Third. That none of the lots of the complainants specified in the bill of complaint fronted on the proposed opening, and that the assessment district cannot under the statute embrace any lots not on the proposed opening.

The assessment in this case was made under the provisions of 3 Howell's section 3064 (o), which provides that if the common council believe that a portion of the city in the vicinity of the proposed improvement will be benefited by such improvement, they may by an entry in their minutes determine that the whole or any just proportion of the compensation awarded by the jury shall be assessed upon the owners or occupants of real estate deemed to be thus benefited, and that they shall by resolution fix and determine the district or portion of the city benefited and specify the amount to be
31 assessed upon the owners thereof. This would seem to be conclusive that the council had authority to include within the assessment district lots not on the proposed opening.

The statute also provides that the assessment shall be made and the amount levied and collected in the same manner and by the same officers and proceedings as near as may be, as is provided in the charter of the municipality for assessing, levying and collecting the expense of public improvements when a street is graded. Complainants' counsel contends that this limits the assessment district to lots fronting on the proposed improvement under section 216 of the charter of the city of Detroit applicable to grading and paving streets; but in my opinion the above provision refers only to the manner or form of making the assessment and to the officers who shall make and collect the same, and not to the extent of territory which may be included in the assessment district. To hold otherwise would be to entirely ignore the earlier provisions of the statute permitting the council in its discretion to make a larger assessment district.

Fourth. It is further contended that the resolution of the common council fixing the assessment district did not specify that such district was benefited by such improvement to the extent of fifteen thousand two hundred fourteen and seventy-five one-hundredths dollars (\$15,214.75), the amount to be assessed upon it, and an elaborate argument is made to show that such finding is the only constitutional or legal basis on which such tax can be imposed and the case of *Detroit vs. Chapin*, 112 Mich. 588 is cited. There is no doubt of the principle invoked, that the actual benefit received as determined by the proper authority is the only legal or constitutional basis upon which such an assessment can be sustained; and that such an assessment without such a determination is both illegal and unconstitutional. The only question here is whether the statute and the resolution of the council in compliance therewith are not in effect a finding or determination that the

assessment district is benefited to the extent of the assessment. That resolution declared first that the property within the assessment district was benefited by the proposed opening. It then directed that there should be levied upon the several pieces or parcels of real estate included in the assessment district the amount of fifteen thousand two hundred fourteen and seventy-five-hundredths dollars (\$15,214.75) in proportion as near as may be to the advantage which each lot or parcel is deemed to acquire by such improvement. And again, the board of assessors are directed in making the roll to assess and levy the amount of fifteen thousand two hundred fourteen and seventy-five one-hundredths dollars (\$15,214.75) — each lot or parcel to be assessed a ratable proportion as near as may be of said amount in accordance to the amount of benefit derived by such improvement.

In my opinion this is a substantial compliance with the provisions of the statute.

The case of Chapin *vs.* Detroit was entirely different. In that case the law provided arbitrarily that in all cases one-half of the award should be assessed upon the assessment district fixed without any regard as to whether the property was benefited. In other words, neither the common council nor the jury were allowed to exercise any discretion relative to the benefits received but were required to assess fifty per cent. of the verdict regardless of benefits received. The court held that the legislature could not arbitrarily fix such a percentage.

Some other points are urged in the complainants' brief but they were not strongly insisted on in the argument and it is not necessary to discuss them.

In my opinion the injunction should be dissolved and the bill dismissed.

W. M. LILLIBRIDGE,
Circuit Judge.

33 STATE OF MICHIGAN :

In the Circuit Court for the County of Wayne. In Chancery.

JOHN C. GOODRICH and CLARENCE M. BURTON, Complainants,	}
<i>vs.</i>	
THE CITY OF DETROIT and LOUIS B. LITTLEFIELD, Defendants.	}

At a session of said court, held at the court-house, in the city of Detroit, on the second day of December, A. D. 1899.

Present: Honorable Willard M. Lillibridge, circuit judge.

This cause having come on upon the motion of complainants for leave to amend their bill of complaint, and by consent of Charles Flowers, of counsel for the defendants, it is ordered that the bill of complaint filed in this cause be, and the same is hereby amended by inserting in paragraph 17 in said bill of complaint, immediately following subdivision *p*, the following :

(*q.*) Because section 3406 of the Compiled Laws of the State of Michigan of 1897, is in violation of article 6, section 32 of the

constitution of the State of Michigan, forbidding the depriving of any person of life, liberty or property without due process of law.

(r.) Because the resolution of the common council directing the assessment, and the assessment made in pursuance of said resolution, upon complainants' lands, by the common council of the city
34 of Detroit, was in violation of article 6, section 32 of the constitution of the State of Michigan.

(s.) Because section 3406 of the Compiled Laws of the State of Michigan of 1897, is in violation of the 14th amendment to the Constitution of the United States, forbidding any State from depriving a person of property, without due process of law.

(t.) Because the resolution of the common council directing the assessment and the assessment made in pursuance of said resolution, upon complainants' lands, for the opening of said street, was in violation of the 14th amendment to the Constitution of the United States, forbidding any State from depriving a person of property without due process of law.

(u.) Because section 3406 of the Compiled Laws of the State of Michigan of 1897, is in violation of article 6, section 32 of the constitution of the State of Michigan, because it does not require that the portion of the award of the jury which the common council may order to be assessed upon said assessment district shall not exceed the total amount of the benefits derived by the lands in said district from such improvement.

(v.) Because section 3406 of the Compiled Laws of the State of Michigan, of 1897, is in violation of the 14th amendment to the Constitution of the United States, because it does not require that the portion of the award of the jury which the common council may order to be assessed upon the said assessment district, shall not exceed the total amount of the benefits derived by the lands in said district from such improvement.

(w.) Because the resolution of the common council of the city of Detroit, directing said assessment, is in violation of article 6, section 32 of the constitution of the State of Michigan because it does not determine or find that the property included in the assessment district is benefited to the amount of the assessment.

35 (x.) Because the resolution of the common council of the city of Detroit, directing said assessment, is in violation of the 14th amendment to the Constitution of the United States, because it does not determine or find that the property included in the assessment district is benefited to the amount of the assessment.

WILLARD M. LILLIBRIDGE,

Circuit Judge.

STATE OF MICHIGAN :

The Circuit Court for the County of Wayne. In Chancery.

JOHN C. GOODRICH and CLARENCE M. BURTON, Complainants, }
vs.
 THE CITY OF DETROIT and LOUIS B. LITTLEFIELD, Defendants. }

At a session of said court, held at the court-house, in the city of Detroit, on the 2nd day of December, A. D. 1899.

Present: Honorable Willard M. Lillibridge, circuit judge.

This cause having come on to be heard upon the bill of complaint herein, the answer of defendant-thereto, the replication of the complainant- to such answer, and the proofs taken in open court in said cause, and having been argued by the counsel for the respective parties;

Now, therefore, on consideration thereof, it is ordered, adjudged and decreed, and the court doth hereby order, adjudge and decree, that the complainants' said bill of complaint be and the same is hereby dismissed, with costs to the defendants to be taxed.

WILLARD M. LILLIBRIDGE,
Circuit Judge.

STATE OF MICHIGAN :

Circuit Court for the County of Wayne. In Chancery.

JOHN C. GOODRICH and CLARENCE M. BURTON, Complainants, }
vs.
 THE CITY OF DETROIT and LOUIS B. LITTLEFIELD, Defendants. }

This cause came on to be heard on bill of complaint, answer and replication thereto, and proofs taken in open court, before the Hon. Willard M. Lillibridge, circuit judge.

It was conceded that the complainants were the owners of lots numbers 66, 69, 70, 80, 81, 84, 85, 86, 87, 88, 89, 96, 97, 98, 99, 100, 101, 102, 103, 104 and 105, of Goodrich & Burton's subdivision of part of section 28, township 1 south of range 12 east, in the city of Detroit, Wayne county, Michigan, and that said lots are worth upwards of one hundred dollars.

Complainants offered in evidence all the records specified in paragraphs 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13 and 14 of the bill of complaint, copies of which records are attached to the bill of complaint filed in this cause, and it is agreed that the copies attached to said bill of complaint shall be taken and used as evidence of such documents, the same as if they were set up in full and included in the testimony.

Complainants offered in evidence the record of the plat of Good-

rich & Burton's subdivision of section 28, town 1 south of range 12 east, which was duly executed and acknowledged by the owners, and dedicated to the public Milwaukee avenue and all the other streets and alleys platted thereon, a copy of which plat, so far as it shows the lots and streets and alleys, is hereto attached, marked Exhibit "C."

Complainants offered in evidence the assessment-roll, No. 58, for defraying the expense of opening and extending Milwaukee avenue, from which it appeared that the assessments on complainants' lots were the same as set forth in section 14 of the bill of complaint in this cause.

Complainants offered in evidence all the records and files of the recorder's court for the city of Detroit, in the proceedings taken for the opening and extending of Milwaukee avenue, from which it appeared that the petition for the opening of the said street, together with all the orders and proceedings had therein, are fully set forth in the bill of complaint as alleged therein.

38 Complainants offered in evidence the charter of the city of Detroit, so far as it relates to the grading and paving of streets.

Complainants offered in evidence from the proceedings of the common council, held April 26th, 1898, the following :

"To the honorable the common council.

GENTLEMEN : On Jan. 6, 1894, proceedings were instituted in the recorder's court for the opening of Milwaukee avenue, between Chene street and Mt. Elliott avenue; and afterwards, on Oct. 29, 1895 (a verdict having been obtained and the money for the awards having been paid into the city treasury), Milwaukee avenue was opened and worked as a public street under the direction of the board of public works.

The Dime savings bank of this city held a first mortgage upon two lots or strips of land taken in this street-opening proceeding, but through some inadvertence the bank was not made a respondent. The mortgage was given by Horace Hitchcock and Charles Holtz, Jan. 19, 1889, recorded in Liber 201 of Mortgages, at page 262, and covered a number of lots aside from those included in the street. All those lots lying outside the street, with one exception, have been released from the mortgage; and now the Dime savings bank is foreclosing upon this lot, known as lot No. 77, and the two lots in the street, known for convenience as lots No. 74 and 75, of E. D. Foster's subdivision of lot 11, fractional section- 29 and 32, town 1 south range 12 east.

The amount now due under the mortgage, including costs, is about \$650. The lot lying outside the street, as I am informed, is not worth to exceed \$500, and there is now due on the same lot an assessment approximating \$180, for the opening of Milwaukee avenue; so it is apparent that if the bank obtains a decree, the lots now used for street purposes will have to be sold to satisfy the mortgage.

In order to prevent the closing of Milwaukee avenue by such a

sale, I have secured an agreement in writing from Charles Holtz, one of the mortgagors and a defendant in the foreclosure proceedings, which agreement is attached to this communication. Mr. Holtz agrees to purchase at foreclosure sale lot 77 (lying outside the street) for an amount sufficient to satisfy the mortgage against all three lots, and release the three lots lying in Milwaukee avenue, provided the city will refund the amount of the assessment, including penalties and costs, now resting against lot 77, for the opening of Milwaukee avenue.

39 Under all the circumstances, this is a good settlement of the difficulty. If your honorable body decided to ratify the agreement with Mr. Holtz, it will be advisable to do so at once, as the foreclosure case will be on trial in the chancery court Thursday next, the 28th inst.

Respectfully submitted,

ARTHUR WEBSTER,
Assistant Corporation Counsel.

Accepted, and leave being granted, the following resolution was offered by Ald. Scovel :

Resolved, That the city controller be and he is hereby authorized and instructed to sign the agreement drawn up by the corporation counsel, between Charles Holtz and the City of Detroit, in the matter of refunding an assessment for the opening of Milwaukee avenue east.

Adopted as follows : Yeas 29, nays none."

It was agreed between the counsel for the respective parties that either party might produce on the hearing in the supreme court, any of the original records referred to in the bill of complaint, answer or testimony in this cause, with the same effect as though such records had been printed in the evidence.

I hereby certify that the foregoing constitutes the substance of all the material testimony introduced on the trial of said cause, and is hereby settled and signed by me on the application of the complainants, this second day of December, A. D. 1899.

WILLARD M. LILLIBRIDGE,
Circuit Judge.

(Here follows diagram marked p. 40.)

EXHIBIT "3."

GOODRICH & BURTON'S

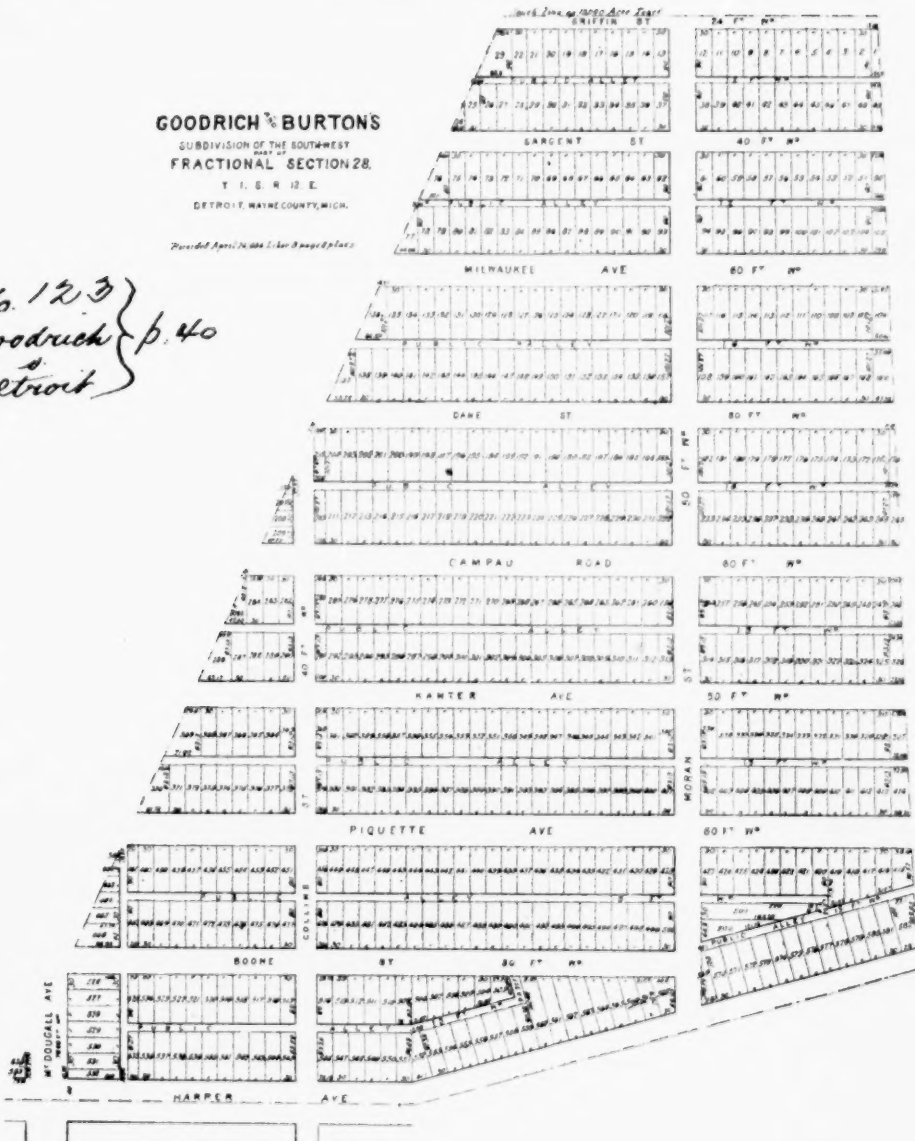
SUBDIVISION OF THE SOUTHWEST
FRACTIONAL SECTION 28.

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DETROIT, WAYNE COUNTY, MICH.

Recorded April 26, 1904, in Book 8 page 6 plate 1

No. 123 }
Goodrich } p. 40
Detroit }



41 STATE OF MICHIGAN:

Circuit Court for the County of Wayne. In Chancery.

JOHN C. GOODRICH and CLARENCE M. BURTON, Complainants,	}
<i>vs.</i>	
THE CITY OF DETROIT and LOUIS B. LITTLEFIELD, City Treasurer, Defendants.	

Now come the said complainants and hereby claim the benefit of an appeal to the supreme court, from the final decree rendered in said cause by said court upon the 2nd day of December, A. D. 1899.

BACON & YERKES,
Solicitors for Complainants.

Dated, December 2, A. D. 1899.

42 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the capitol, in the city of Lansing, on the sixth day of February in the year of our Lord one thousand nine hundred.

Present: The Honorable Robert M. Montgomery, chief justice. Frank A. Hooker, Joseph B. Moore, Charles D. Long, Claudius B. Grant, associate justices.

JOHN C. GOODRICH and CLARENCE M. BURTON, Com-	}
plainants and Appellants,	
<i>vs.</i>	
THE CITY OF DETROIT ET AL., Defendants.	No. 17897.

This cause coming on to be heard is duly submitted on briefs.

43 *Opinion.*

Supreme Court of the State of Michigan.

JOHN C. GOODRICH and CLARENCE M. BURTON	}
<i>vs.</i>	
THE CITY OF DETROIT and LOUIS B. LITTLEFIELD.	

The facts are sufficiently set out in the opinion of Judge Lillibridge, who heard the case in the court below. We adopt the opinion. It is as follows:

"The bill in this case is filed to enjoin the collection of a special tax levied for the opening and extending of Milwaukee avenue, between Chene street and Mt. Elliott avenue, sixty feet wide. The proceedings were taken under the general act, chapter 83, 3 Howell's Statutes, as amended. The complainants are not persons whose lands were taken by the proposed opening, and, consequently, they were not parties to the proceeding for the opening of said street; but they are owners of land within the assessment district authorized by section 3064 (o), Howell's Statutes; and therefore, so far as the bill filed in this cause seeks to impugn the opening proceedings

prior to the verdict and judgment, it is a collateral attack upon such proceedings. Several grounds are urged why the assessment should be held void:

"First. That the petition for opening the street and the verdict of the jury rendered in said cause do not describe the several parcels of land to be taken for such improvement.

"The statute, 3 Howell's Statute-, section 3064 (o) provides that the petition shall contain a description of the property to be taken and generally the nature and extent of the use thereof that will be required and also the names of the owners and others interested in the property, so far as can be ascertained. The statute also requires the jury by their verdict to award to each of the owners and persons interested a just compensation for the property taken.

"The cases cited in complainants' brief relate chiefly to the opening and laying out of drains or to proceedings for condemning land for railway purposes. The requirements as to the description of the lands proposed to be taken in those cases are found in 1 Howell's Statutes, sections 1696 and 3382, and are essentially different from that above quoted. The statute in those cases requires substantially that each distinct parcel of land shall be described, whereas it will

be seen that in the case of street opening there is no such
44 requirement. Moreover, the cases cited are those in which the question was raised by the land-owners in the direct action on appeal or by writ of error or certiorari, and not collaterally by other persons than the owners of the land, as in this case. These authorities are not, therefore, in my opinion, applicable to the case of street openings and to a collateral attack upon such proceedings.

"In this case the petition in the first column describes with substantial accuracy all the land to be taken for the proposed opening. This is subject to one qualification. In one description of land in the first column, in describing a course or direction there is a clerical error. Instead of the course running 'north 64 east,' as is correct, the description reads 'south 64 west.' All the other descriptions containing the same course or direction read correctly, viz., 'N. 64 east.' That this is a clerical error is proved by the fact that the original manuscript description on file reads correctly, to wit, 'north 64 east.' Attached to the petition also is a carefully prepared plat of all the land proposed to be taken. This plat is made according to scale and certified to by the city engineer, and shows the original lots and descriptions with dimensions, and the part proposed to be taken is in colors with dimensions of every parcel of land to be affected and is correct in every particular. This plat is referred to in the petition and made a part thereof; but in the second column of the petition wherein it was attempted to subdivide and apportion the general description contained in the first column among the several owners, there are some inaccuracies of description. These several owners were all made parties defendant, and appeared and made no objections to such inaccuracies or errors of description of their property. They made no objection whatever to the jurisdiction or to proceeding in the case. They introduced

testimony as to the value of their lands which would actually be taken as shown by the plat, and the jury awarded them severally such damages as they would suffer, as shown by the pat. The descriptions in the verdict are the same as in the petition. The verdict also refers to the plat in a finding that it is necessary to take the private property described in the petition in this cause. Judgment was duly entered confirming the verdict, and no appeal has been taken therefrom and the time for appeal has expired. It was stated on the argument that all of the different persons whose lands were taken have received and accepted their awards as per the verdict and have executed conveyance to the city of the lands actually taken.

"The question before me is not whether some or any of those defendants, the owners of land taken, might have enjoined the city of Detroit from proceeding to take possession of lands so inaccurately described, for they have all submitted to the jurisdiction and the verdict and received their awards; but the question is whether other persons, these complainants, whose lands were not taken but which are within the assessment district, made to pay for the
45 said opening, can take advantage of such irregularities and inaccuracies to enjoin the collection of the said tax.

"It is well established that a judgment can be attacked collaterally only for want of jurisdiction. Did the recorder's court, therefore, have jurisdiction of the proceeding to make the proposed opening, notwithstanding such errors in description? The general description of the land to be taken was substantially correct. The plat must be regarded as a part of the petition, and together they correctly showed the land to be taken in detail with dimensions. Taken together, the inaccuracies of description are corrected upon the very face of the papers. There is not even a claim that any one was misled thereby. Moreover, the statute (Howell's, section 3064), provides that amendments may be allowed in the description of property proposed to be taken as well after as before judgment confirming the verdict. This would seem to imply that errors in description of small parcels were not intended to defeat the jurisdiction, so long as the whole property to be taken was correctly stated; otherwise the provision for amending descriptions would be meaningless and useless. I have no doubt, therefore, that the recorder's court did have jurisdiction of both the persons and the subject-matter of the proceeding and that the city of Detroit got a good title to the lands shown in the plat. If any of the defendants whose lands were to be taken had objected to the descriptions they would undoubtedly have been at once corrected under the above liberal provision for amendments; and since none of such defendants did object to the descriptions, they must be regarded as having waived all inaccuracies of description, and that the verdict and judgment cure all of such errors.

"Second. The statute, 3 Howell's, section 3064 (g), prescribes the oath which the jurors shall take in street-opening cases. The only record found in the proceedings of the oath taken by the jurors in this case is contained in the journal as follows: Thereupon the jury

impannelled (here follow the names of the jury) are duly elected, tried and sworn in the manner prescribed by law, etc. It is contended that the omission to show that the jury took the oath required by the statute is a fatal defect in the proceedings.

"It is not doubted that where in special proceedings the statute requires a particular oath to be taken, it must be shown that the oath prescribed was actually administered. If the oath required was not administered, the objection was undoubtedly open to any of the defendants in that case, the parties interested; but it is equally well settled that the verdict when rendered cures all defects and irregularities in the proceedings not jurisdictional. In my opinion, this objection is not open to these complainants who were not parties to that proceeding and cannot take advantage of it in a collateral attack upon the verdict and judgment. All the cases cited in the complainants' brief are those in which the objection was raised in a direct review of the proceedings, either in certiorari, error or appeal, and in my judgment they are not applicable to the case of a collateral attack on such proceedings.

46 "Third. That none of the lots of complainants specified in the bill of complaint fronted on the proposed opening, and that the assessment district cannot under the statute embrace any lots not on the proposed opening.

"The assessment in this case was made under the provisions of 3 Howell's, section 3064 (*o*), which provides that if the common council believe that a portion of the city in the vicinity of the proposed improvement will be benefitted by such improvement, they may by an entry in their minutes determine that the whole or any just proportion of the compensation awarded by the jury shall be assessed upon the owners or occupants of real estate deemed to be thus benefitted, and that they shall by resolution fix and determine the district or portion of the city benefitted and specify the amount to be assessed upon the owners thereof. This would seem to be conclusive that the council had authority to include within the assessment district lots not on the proposed opening.

"The statute also provides that the assessment shall be made and the amount levied and collected in the same manner and by the same officers and proceedings as near as may be as is provided in the charter of the municipality for assessing, levying and collecting the expense of public improvements when a street is graded. Complainants' counsel contends that this limits the assessment district to lots fronting on the proposed improvement under section 216 of the charter of the city of Detroit applicable to grading and paving streets; but in my opinion, the above provision refers only to the manner and form of making the assessment and to the officers who shall make and collect the same, and not to the extent of territory which may be included in the assessment district. To hold otherwise would be to entirely ignore the earlier provisions of the statute permitting the council in its discretion to make a larger assessment district.

"Fourth. It is further contended that the resolution of the common council fixing the assessment district did not specify that such

district was benefitted by such improvement to the extent of fifteen thousand two hundred fourteen and seventy-five-hundredths dollars (\$15,214.75), the amount to be assessed upon it, and an elaborate argument is made to show that such finding is the only constitutional or legal basis on which such a tax can be imposed; and the case of *Detroit vs. Chapin*, 112 Michigan, 588, is cited.

"There is no doubt of the principle invoked, that the actual benefit received as determined by the proper authority is the only legal or constitutional basis upon which such an assessment can be sustained, and that such an assessment without such a determination is both illegal and unconstitutional. The only question here is whether the statute and the resolution of the council in compliance therewith are not in effect a finding or determination that the assessment district is benefitted to the extent of the assessment. That resolution declared first that the property within the assessment district

47 that there should be levied upon the several pieces or parcels of real estate included in the assessment district the amount of fifteen thousand two hundred fourteen and seventy-five-hundredths dollars (\$15,214.75) in proportion as near as may be to the advantage which each lot or parcel is deemed to acquire by such improvement. And again, the board of assessors is directed in making the roll to assess and levy the amount of fifteen thousand two hundred fourteen and seventy-five-hundredths dollars (\$15,214.75), each lot or parcel to be assessed a ratable proportion as near as may be of said amount in accordance to the amount of benefit derived by such improvement. In my opinion this is a substantial compliance with the provisions of the statute.

"The case of *Chapin vs. Detroit* was entirely different. In that case the law provided arbitrarily that in all cases one-half of the award should be assessed upon the assessment district fixed without any regard as to whether the property was benefitted. In other words, neither the common council nor the jury were allowed to exercise any discretion relative to the benefits received but were required to assess fifty per cent. of the verdict regardless of benefits received. The court held that the legislature could not arbitrarily fix such percentage.

"Some other points are urged in the complainants' brief; but they were not strongly insisted on in the argument, and it is not necessary to discuss them.

"In my opinion the injunction should be dissolved and the bill dismissed."

A decree was entered in accordance with the above opinion.

We think the opinion fully sustained by the authorities. In the case of *Scotten vs. City of Detroit*, 106 Mich., 564, it was held that the statute contemplates a judicial determination of the questions raised by the averments of the petition; that a judgment of confirmation necessarily includes a determination by the court that the proceedings were properly instituted; that such judgment is not open to collateral attack; and that therefore a judgment having been properly entered a tax-payer cannot maintain a bill to restrain

the collection of an assessment for benefits derived from the improvement, on the ground that the resolution of the council was not legally adopted. See also: *Smith vs. City of Detroit*, 6 Det. Legal News, 281.

The question of the constitutionality of the act is fully discussed and disposed of in the case of *Voigt vs. City of Detroit*, filed at the present term.

The other questions raised have been so fully discussed by the learned circuit judge that nothing further need be added.

The decree below must be affirmed with costs.

CHARLES D. LONG.

C. B. GRANT.

J. B. MOORE.

R. M. MONTGOMERY.

FRANK A. HOOKER.

(Endorsed :) Filed March 27, 1900. Chas. C. Hopkins, clerk supreme court.

48 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the capitol, in the city of Lansing, on the twenty-seventh day of March in the year of our Lord one thousand nine hundred.

Present: The Honorable Robert M. Montgomery, chief justice; Frank A. Hooker, Joseph B. Moore, Charles D. Long, Claudius B. Grant, associate justices.

JOHN C. GOODRICH and CLARENCE M. BURTON, Com-
plainants and Appellants,

vs.

THE CITY OF DETROIT and LOUIS B. LITTLEFIELD,
City Treasurer, Defendants.

} No. 17897.

This cause having been brought to this court by appeal from the circuit court for the county of Wayne, in chancery, and having been argued by counsel, and due deliberation had thereon, it is now ordered, adjudged and decreed by the court, that the decree of the circuit court for the county of Wayne, in chancery, dismissing the bill of complaint be and the same is hereby in all things affirmed. And it is further ordered, adjudged and decreed that the defendants do recover of and from the complainants costs, to be taxed.

49 To the Hon. Henry B. Brown, justice of the Supreme Court of the United States:

The petition of John C. Goodrich and Clarence M. Burton, respectfully shows:

1. That they are the complainants and appellants in a suit in equity commenced in the circuit court for the county of Wayne, in the State of Michigan, against The City of Detroit and Louis B. Littlefield, treasurer of said city of Detroit, defendants, in which cause a final decree was rendered in the said circuit court for the county of Wayne, in chancery, in favor of the defendants, and which was

afterwards appealed to the supreme court of the State of Michigan, by your petitioners.

2. That said cause was heard on appeal in the supreme court of the State of Michigan, and a decree rendered therein affirming the decree and determination of the circuit court for the county of Wayne, in chancery, and dismissing your petitioner's bill of complaint.

3. That it was claimed by your petitioners, the complainants in said suit, that the assessment of certain special assessments upon and against certain land owned by your petitioners, was invalid, because a certain statute of the State of Michigan was unconstitutional and invalid for the reason that it is repugnant to the Constitution of the United States; that said claim was set up in the bill of complaint in said cause, and that the decision thereof by the supreme court of the State of Michigan was in favor of the validity of said statute.

4. That it was claimed by your petitioners, the complainants in said suit, that the assessment of certain special assessments upon and against certain lands owned by your petitioners, was invalid because certain proceedings which were taken under authority of the State of Michigan were unconstitutional and invalid for the reason that they were repugnant to the Constitution of the United States; that said claim was set up in the bill of complaint in said cause, and that the decision thereof by the supreme court of the State of Michigan was in favor of the validity of the said proceedings.

5. Whereupon your petitioners pray for an order allowing the issue of the writ of error herewith filed to remove the record in said cause to the Supreme Court of the United States for review, and for a citation directed to the defendants in said cause, and that the bond herewith tendered may be duly approved

JOHN C. GOODRICH,
CLARENCE M. BURTON,

Petitioners.

50½ [Endorsed:] Filed July 25, 1900 Chas. C. Hopkins clerk
supreme court of Michigan.

51 UNITED STATES OF AMERICA, ss :

The President of the United States to the honorable the judges of the supreme court of the State of Michigan, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Michigan before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between John C. Goodrich and Clarence M. Burton, complainants and plaintiffs in error, and The City of Detroit and Louis B. Littlefield, treasurer of the city of Detroit, defendants and defendants in error, wherein was drawn in question the validity of a statute of said State of Michigan, on the ground of *their* being

repugnant to the Constitution of the United States, and the decision was in favor of such *their* validity; and wherein was drawn in question the validity of an authority exercised under said State on the ground of *their* being repugnant to the Constitution of the United States, and the decision was in favor of said *their* validity, a manifest error hath happened, to the great damage of the said John C. Goodrich and Clarence M. Burton, plaintiffs in error as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twenty-third day of July, in the year of our Lord one thousand nine hundred.

[Seal of the Circuit Court, Eastern District of Michigan.]

WALTER S. HARSHA,
*Clerk of the Circuit Court of the United States
for the Eastern District of Michigan.*

Allowed by

H. B. BROWN,

*Associate Justice of the Supreme Court
of the United States.*

[Endorsed :] Filed July 25, 1900 Chas. C. Hopkins clerk supreme court of Michigan.

52

Bond.

Know all men by these presents, that we, John C. Goodrich and Clarence M. Burton, as principals, and James S. Goodrich as surety, are held and firmly bound unto the City of Detroit, in the State of Michigan, and Louis B. Littlefield, treasurer of the said city of Detroit in the full and just sum of one thousand dollars, to be paid to the said City of Detroit and Louis B. Littlefield, treasurer of the city of Detroit, certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-third day of July in the year of our Lord one thousand nine hundred.

Whereas, lately at a session of the supreme court of the State of Michigan in a suit depending in said court, between John C. Goodrich and Clarence M. Burton complainants, and The City of Detroit

and Louis B. Littlefield, treasurer of the city of Detroit defendants, a decree was rendered against the said John C. Goodrich and Clarence M. Burton, complainants therein, and the said John C. Goodrich and Clarence M. Burton having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said City of Detroit and Louis B. Littlefield, treasurer of the city of Detroit citing and admonishing them to be and appear at a supreme court of the United States, at Washington, within thirty days from the date thereof.

Now the condition of the above obligation is such, that if the said John C. Goodrich and Clarence M. Burton shall prosecute said writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

JOHN C. GOODRICH.	[SEAL.]
CLARENCE M. BURTON.	[SEAL.]
JAMES S. GOODRICH.	[SEAL.]

Scaled and delivered in presence of—

Approved by
H. B. BROWN,
*Associate Justice of the Supreme Court
of the United States.*

53 STATE OF MICHIGAN,)
County of Wayne,) ss :

James S. Goodrich of the city of Detroit in said county of Wayne being duly sworn deposes and says that he is worth the sum of one thousand dollars over and above all exemptions and liabilities and further saith not.

JAMES S. GOODRICH.

Sworn to and subscribed before me this ninth day of June, A. D. 1900.

H. H. RADCLIFFE,
Notary Public, Wayne County, Mich.

[Endorsed:] Copy. Goodrich vs. City of Detroit. Bond. Filed July 25, 1900. Chas. C. Hopkins, clerk.

54 UNITED STATES OF AMERICA, ss :

To the City of Detroit and Louis B. Littlefield, treasurer of the city of Detroit, Greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Michigan wherein John C. Goodrich and Clarence M. Burton are plaintiffs in error and you are

defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry B. Brown, associate justice of the Supreme Court of the United States, this twenty-third day of July, in the year of our Lord one thousand nine hundred.

HENRY B. BROWN,

Associate Justice of the Supreme Court of the United States.

On this 23rd day of July, in the year of our Lord one thousand nine hundred, personally appeared Elbridge F. Bacon before me, the subscriber, a notary public in and for the county of Wayne and State of Michigan and makes oath that he delivered a true copy of the within citation to William B. Thompson treasurer of the city of Detroit and also that he delivered a true copy to Francis A. Blades comptroller of the city of Detroit.

ELBRIDGE F. BACON.

Sworn to and subscribed the 23rd day of July, A. D. 1900.

HOWARD SHEPHERD,

Notary Public, Wayne County, Mich.

[Endorsed:] Filed July 25, 1900 Chas. C. Hopkins clerk supreme court of Michigan.

55

Supreme Court of the United States.

JOHN C. GOODRICH and CLARENCE M. BURTON, Plaintiffs in }
Error,

vs.

THE CITY OF DETROIT and LOUIS B. LITTLEFIELD, Treasurer of }
said City of Detroit, Defendants in Error.

Assignments of Error.

Now come the said John C. Goodrich and Clarence M. Burton, complainants and plaintiffs in error, by Harlow P. Davock, their solicitor, and say that in the record and proceedings aforesaid and in the judgment and decree of the supreme court of the State of Michigan in the said cause, there is manifest error, as follows, to wit:

1. That the said court erred in affirming the decree of the circuit court for the county of Wayne, in chancery, and dismissing the complainants' bill of complaint, because in and by said bill of complaint and in said suit there was drawn in question the validity of the statute of the State of Michigan, being section 3406 of the Compiled Laws of the State of Michigan of the year 1897 on the ground of its being repugnant to the fourteenth article of the amendments to the Constitution of the United States, in that it provides for the taking of property without due process of law, and because the said judg-

ment and decree of said supreme court of the State of Michigan was a decision in favor of said statute.

56 2. That the said court erred in affirming the decree of the circuit court for the county of Wayne, in chancery, and dismissing the complainants' bill of complaint, because in and by said bill of complaint and in said suit was drawn in question the validity of said statute of the State of Michigan, being section 3406 of the Compiled Laws of the State of Michigan for the year 1897, on the ground of its being repugnant to the fourteenth article of the amendments to the Constitution of the United States, in that it denies the equal protection of the laws to the owners of property assessed under the provisions of said statute, and so denied the equal protection of the law to the complainants, and because the said judgment and decree of the said supreme court of the State of Michigan was a decision in favor of the validity of said statute.

3. Said court erred in affirming the decree of the circuit court for the county of Wayne, in chancery, and dismissing the complainants' bill of complaint, because in and by said bill of complaint and in said suit was drawn in question the validity of the proceedings taken which resulted in the assessment upon the lands of the complainants, as set forth in the bill of complaint, which proceedings were an exercise of authority under the State of Michigan, upon the ground that the said proceedings were repugnant to the fourteenth article of the amendments to the Constitution of the United States, for the reason that they amounted to the taking of property without due process of law, and to a denial of the equal protection of the laws to the complainants, and because said judgment and decree of the said supreme court of the State of Michigan, was a decision in favor of the validity of said proceedings.

57 Whereas, by the law of the land the said judgment and decree of the said supreme court should have been given for the said John C. Goodrich and Clarence M. Burton, complainants, against the said City of Detroit and Louis B. Littlefield, treasurer of said city of Detroit, defendants, and should have reversed the decree of the circuit court for the county of Wayne, in chancery, and the said John C. Goodrich and Clarence M. Burton pray that the said judgment and decree may be reversed and annulled, and that a decree may be entered establishing and declaring the invalidity of said statute and proceedings.

HARLOW P. DAVOCK,
Solicitor for Complainants.

57½ [Endorsed:] Supreme Court of the United States. John C. Goodrich and Clarence M. Burton, plaintiffs in error, vs. The City of Detroit and Louis B. Littlefield, treasurer of said city of Detroit, defendants in error. Assignments of error. Filed July 27, 1900 Chas. C. Hopkins clerk supreme court of Michigan. Harlow P. Davock sol'r for compl'ts.

Parties.		Plaintiffs' attorneys.	Defendants' attorneys.
John C. Goodrich and Clarence M. Burton, Complainants and Appellants,		Bacon & Yerkes.	Charles Flowers.
<i>vs.</i> The City of Detroit and Louis B. Littlefield, City Treasurer, Defendants.		Appeal from Wayne, in chancery.	

Journal.	Date.	Proceedings.
	1899.	
	Dec. 2	Notice of appeal filed and proof of service filed.
	" 13	Record on appeal filed.
	" 13	Note of argument filed.
	1900.	
	Feb. 6	Stipulation as to briefs filed.
P, 641....	" 6	Submitted on briefs.
Q, 30 ..	Mar. 27	Affirmed with costs.
	July 2	Defendants' costs taxed at \$33.76.
	" 25	Petition for allowance of writ filed.
	" 25	Writ of error to Supreme Court of the United States allowed by Brown, associate justice Supreme Court of United States.
	" 25	Citation with proof of service filed.
	" 25	Bond, duly approved, filed.
	" 27	Assignment of errors in Sup. Ct. U. S. filed.
	" 27	Return made to Supreme Court of United States.

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Supreme Court of the State of Michigan.

JOHN C. GOODRICH and CLARENCE M. BURTON, Plaintiffs in Error, }
vs.
 THE CITY OF DETROIT and LOUIS B. LITTLEFIELD, Treasurer of }
 said City, Defendants in Error.

STATE OF MICHIGAN, }
In Supreme Court, } ss :

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the record and of all proceedings had and entered in the above-entitled cause by said court, including the written decision and reasons therefor, signed by the judges of said court; and filed in my office, as appears of record and in file in said cause; that I have compared the same with the originals and it is a true transcript therefrom, and the whole thereof; that attached thereto are the writ of error, with allowance endorsed thereon, a copy of the bond to the adverse parties, duly approved, filed with the writ of error, the citation with proof of service endorsed thereon,

and the assignments of error in the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at the city of Lansing this twenty-seventh day of July, in the year of our Lord one thousand nine hundred.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,

Clerk Supreme Court of the State of Michigan.

Endorsed on cover: File No. 17,853. Michigan supreme court. Term No. 123. John C. Goodrich and Clarence M. Burton, plaintiffs in error. *vs.* The City of Detroit and Louis B. Littlefield, treasurer of the city of Detroit. Filed July 31st, 1900.